

**DESCRIPTION OF H.R. 640,
A BILL TO MODIFY THE TAX RATE FOR EXCISE TAX ON
INVESTMENT INCOME OF PRIVATE FOUNDATIONS**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 4, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Modification of the Tax Rate for the Excise Tax on Investment Income of Private Foundations (sec. 4940 of the Code)	2
B. Estimated Revenue Effects	4

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 640, a bill to modify the tax rate for excise tax on investment income of private foundations, on February 4, 2015. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 640, A Bill to Modify the Tax Rate for Excise Tax on Investment Income of Private Foundations* (JCX-10-15), February 3, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

**A. Modification of the Tax Rate for the Excise Tax
on Investment Income of Private Foundations
(sec. 4940 of the Code)**

Present Law

Under section 4940(a), a private foundation (other than an exempt operating foundation) that is exempt from tax under section 501(a) for a taxable year is subject to a two-percent excise tax on its net investment income. Net investment income generally includes interest, dividends, rents, royalties (and income from similar sources), and capital gain net income, and is reduced by expenses incurred to earn this income. The two-percent rate of tax is reduced to one-percent in any year in which a foundation exceeds the average historical level of its charitable distributions. Specifically, the excise tax rate is reduced if the foundation's qualifying distributions (generally, amounts paid to accomplish exempt purposes)² equal or exceed the sum of (1) the amount of the foundation's assets for the taxable year multiplied by the average percentage of the foundation's qualifying distributions over the five taxable years immediately preceding the taxable year in question, and (2) one percent of the net investment income of the foundation for the taxable year.³ In addition, the foundation cannot have been subject to tax in any of the five preceding years for failure to meet minimum qualifying distribution requirements in section 4942.

Private foundations that are not exempt from tax under section 501(a), such as certain charitable trusts, are subject to an excise tax under section 4940(b). The tax is equal to the excess of the sum of the excise tax that would have been imposed under section 4940(a) if the foundation were tax exempt and the amount of the tax on unrelated business income that would have been imposed if the foundation were tax exempt, over the income tax imposed on the foundation under subtitle A of the Code.

Private foundations are required to make a minimum amount of qualifying distributions each year to avoid tax under section 4942. The minimum amount of qualifying distributions a foundation has to make to avoid tax under section 4942 is reduced by the amount of section 4940 excise taxes paid.⁴

Description of Proposal

The provision replaces the two rates of excise tax on tax-exempt private foundations with a single rate of tax of one percent. Thus, under the provision, a tax-exempt private foundation generally is subject to an excise tax of one percent on its net investment income. A taxable private foundation is subject to an excise tax equal to the excess (if any) of the sum of the one-percent net investment income excise tax and the amount of the tax on unrelated business income

² Sec. 4942(g).

³ Sec. 4940(e).

⁴ Sec. 4942(d)(2).

(both calculated as if the foundation were tax-exempt), over the income tax imposed on the foundation. The provision repeals the special reduced excise tax rate for private foundations that exceed their historical level of qualifying distributions.

The proposal exempts any budgetary effects from the PAYGO scorecards under the Statutory Pay-As-You-Go Act of 2010.

Effective Date

The proposal is effective for taxable years beginning after the date of enactment.

B. Estimated Revenue Effects

Fiscal Years [Millions of Dollars]												
<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2015-20</u>	<u>2015-25</u>
[1]	-129	-172	-180	-187	-195	-203	-212	-221	-230	-240	-863	-1,969

NOTE: Details do not add to totals due to rounding.

[1] Loss of less than \$500,000.